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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Plaintiff,

THE WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

THE WALKER RIVER IRRIGATION
DISTRICT, a corporation, et al.,

Defendants.

UNITED STATES OF AMERICA,
WALKER RIVER PAIUTE TRIBE,

Counterclaimants

v.

WALKER RIVER IRRIGATION DISTRICT,
et al.,

Counterdefendants.

IN EQUITY NO. C-125-RCJ
Subproceedings: C-125-B

3:73-cv-00127-RCJ-WGC

**POINTS AND AUTHORITIES OF
CIRCLE BAR N RANCH, LLC, ET AL.
IN SUPPORT OF ITS JOINDER TO
WALKER RIVER IRRIGATION
DISTRICT'S MOTION TO DISMISS
CLAIMS OF UNITED STATES BASED
UPON STATE LAW PURSUANT TO
FED. R. CIV. P. 12(b)(1), AND
SUPPLEMENTAL ARGUMENT**

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1 **1. Introduction**

2 Following a public lands survey, the Walker River Reservation (“Reservation”) was set
3 apart for the Tribe by Executive Order dated March 19, 1874. The Ninth Circuit Court of
4 Appeals concluded the establishment of the Reservation was effective the date the lands were
5 withdrawn by the Commissioner of Indian Affairs, November 29, 1859, rather than the date of
6 the Executive Order. *United States v. Walker River Irr. Dist.*, 104 F.2d 334, 340 (CA 9 1939).
7 Only waters unappropriated at the time of the establishment of the Reservation were subject to
8 appropriation. In 1924, the United States brought a suit in equity on behalf of the Paiute Tribe
9 against the appropriators and users of the waters of Walker River and its tributaries claiming an
10 interest in 150 cubic feet per second (“cfs”) of the river and its tributaries.

11 The 1925 suit resulted in a Decree issued by this Court in 1936 adjudicating the relative
12 rights of the parties and holding that the government had failed to reserve water for use on the
13 reservation. *United States v. Walker River Irr. Dist.*, No. C-125-ECR (D.Nev. April 14, 1936).
14 The United States appealed the holding to the Ninth Circuit Court of Appeals, which reversed the
15 District Court’s denial. *United States v. Walker River Irrigation District*, 104 F.2d 334 (9th Cir.
16 1939). The Decree was amended in 1940 to conform to the Court of Appeals mandate. *Order for*
17 *Entry of Amended Final Decree to Conform to Writ of Mandate* (D. Nev. Apr. 24, 1940):

18 The plaintiff, United States of America, is hereby adjudged and
19 decreed to be the owner of the right to divert a continuous flow of
20 26.25 cubic feet per second of the natural flow of the Walker River
21 to be diverted from said stream upon or above the Walker River
22 Reservation during the irrigation season of 180 days of each year
23 for the irrigation of 2100 acres of land situate in the Walker River
Indian Reservation, in addition to whatever flow of said stream is
reasonably necessary for domestic and stock watering purposes
and power purposes, to the extent now used by plaintiff during the
non-irrigation season, all with a priority of November 29, 1859, the
date of the establishment of said Indian Reservation.

24 *Id.*

25 Following issuance of the 1936 Decree, and before the Ninth Circuit Court of Appeals
26 addressed the appeal, Congress legislated approximately 171,200 additional acres of ceded lands



1 to the Walker River Reservation for timber and grazing purposes. This Congressional legislation
2 provided that the minerals were reserved for the United States and the lands were “subject to
3 mineral entry or claim under the public land mining laws.” It further provided that “said
4 withdrawal shall not affect any valid rights initiated prior to the approval hereof.”

5 In 1991, the Walker River Irrigation District (“WRID”) filed a complaint against the
6 California Water Control Board, alleging the Board lacked authority to issue orders in conflict
7 with the Decree. *See* Order filed October 27, 1992.(Docket # 15). In 1992, the Walker River
8 Paiute Tribe (“Tribe” or “WRPT”) filed an answer and counterclaim, requesting a right to store
9 water in Weber Reservoir for use on the Reservation and for a federal reserved water right for
10 lands added to the Reservation in 1936. The 1992 counterclaims also requested additional water
11 uses over and above the reserved rights awarded to the United States for the benefit of the
12 Walker River Indian Reservation in the Decree. The United States filed a counterclaim the same
13 year asserting identical claims for water use to benefit the Walker River Indian Reservation.
14 While the Tribes’ and United States’ pleadings were procedurally, improperly denominated
15 counterclaims, this Court, by Order dated October 27, 1992, determined that the counterclaims
16 would be treated as if filed as cross-claims.

17 In 1997, the Tribe filed a “First Amended Counter Claim,” adding claims for ground
18 water use for the Reservation. The United States similarly filed a First Amended Claim, which
19 advanced claims for surface and ground water for use at the Walker River Reservation, the
20 Yerington Reservation, the Bridgeport Paiute Indian Colony, several individual allotments, as
21 well as surface water and groundwater claims for other federal enclaves within the Walker River
22 Basin.

23 **2. Procedural Posture**

24 Service of process proceeded and on November 4, 2013, a status hearing was held before
25 the District Court to establish a briefing schedule regarding certain threshold jurisdictional
26 issues. By order, the Court instituted a briefing schedule requiring Motions to Dismiss to be



1 filed by the Respondents regarding limited, specific issues on questions relating to Jurisdiction.
2 These motions to raise threshold jurisdictional challenges were contemplated under the Case
3 Management Order (C-125-B Document #108). The Court ordered that the jurisdictional
4 challenges focus on the Tribes' and the United States' Amended Counterclaims (C-125-B
5 Document #58 and #59), as well as Mineral County's Amended Complaint in Intervention (C-
6 125-C Document #20).

7 The Court narrowed the scope of the topics it preferred to be covered in the first Motions
8 to be filed by Respondents. This Memorandum is in response to the Court's order following the
9 July 25, 2013, status hearing.

10 Circle Bar N Ranch, LLC, et al. hereby joins and adopts all argument made by the
11 Walker River Irrigation District in its Motion, and any argument made herein is meant to
12 supplement that made by the Walker River Irrigation District, and should not be construed as an
13 opposition to such.

14 **3. Decree Court Lacks Jurisdiction to Adjudicate New Claims for Additional**
15 **Water Rights Under C-125**

16 This Court lacks jurisdiction to adjudicate new claims for additional surface and/or
17 underground water rights, because final judgment was entered. A new and separate action must
18 form the basis for the claims made by the Tribes, United States and Mineral County.

19 The United States and Tribe improperly filed their claims in Case No. C-125. No
20 authority exists for reopening the Decree in order to enlarge the United States' decreed rights or
21 to provide additional rights to the Tribe (or any other party) because a final judgment was
22 entered. In addition, a prohibition specifically precluding enlargement of a party's rights is
23 found in the provisions of the Decree itself, as explained below.

24 Case C-125 adjudicated the implied federally reserved rights for the Walker
25 River Paiute Tribe as of June 14, 1936. *Decree, United States of America v.*
26



1 Walker River Irrigation District, et al., as Amended Order for Entry of Amended Final Decree to
2 Conform to Wirt of Mandate (D Nev. Apr. 24, 1940). The Decree provides for the Court's
3 continuing jurisdiction as it relates to regulation of the water uses adjudicated. The Decree's
4 jurisdictional statement provides:

5 The court shall retain jurisdiction of this cause for the purpose of
6 changing the duty of water or for correcting or modifying the
7 decree to be entered; also for other regulatory purposes, including
8 a change of the place of use of any water...

8 *Id.* at 11.

9 While it is possible for this Court to modify or change the duty of existing adjudicated
10 water uses established under the Decree, no authority exists for reopening the Decree to
11 adjudicate new water use claims to the United States, Tribe, or any other party, as the Court
12 entered a final order which did not retain jurisdiction allowing for any further claims'
13 adjudication.

14 In order to fully understand the limited nature of the retained, regulatory jurisdiction, we
15 must look to decree language in other cases. In *Arizona v. California*, 460 U.S. 605, 607 (1983),
16 the Court reviewed a decree which was issued in 1964, in which the United States acquired water
17 rights for multiple Indian reservations. The United States petitioned the Court to increase the
18 tribes' water rights under the 1964 decree. The Court first looked at its jurisdiction to grant such
19 additional rights, and in doing so looked to the language of the decree, which provided:

20 Any of the parties may apply at the foot of this decree for its
21 amendment or for further relief. The Court retains jurisdiction of
22 this suit for the purpose of any order, direction, or modification of
23 the decree, or any supplementary decree, that may at any time be
24 deemed proper in relation to the subject matter in controversy.

23 *Id.* at 617-618 (emphasis added). Under the "supplementary" language, the Court found
24 jurisdiction to allow the additional, or "supplemental", rights to be granted.

25 In the present case, no such "supplemental" jurisdiction was retained by the Court within
26 the final order of the Decree. If the Court had intended to retain the right to supplement the

Decree by allowing additional claims to surface and/or ground water rights to be added, it would have expressly provided for this jurisdiction. Instead, this Decree provides only for regulatory, continuing jurisdiction in its final order.

4. Decree Court and United States District Court Jurisdiction is Limited to Claims Based on Federal Law

The United States District Court for the District of Nevada holds jurisdiction over adjudicated claims brought by the United States and Tribe for water rights of use which are based on federal law. This jurisdiction is based on the United States' ability to reserve water for federally reserved lands.

The power of the United States Government to reserve waters for federally reserved lands and exempt them from subsequent appropriation is "beyond debate." *United States v. Walker River Irrigation District*, 104 F.2d 334, 336 (9th Cir. 1939). The scope and extent to which reserved rights may be claimed is derived and delimited by *Winters v. United States*, 207 U.S. 564 (1908), and its progeny.

The United States Supreme Court's holding in *Winters* established the federal government's right to impliedly reserve water rights for federal reservations, even when the treaty, executive order, or legislation that created the reservation was silent as to the reservation of those rights. Since its inception in 1908, the *Winters* doctrine has expanded to apply to other types of federal reservations. For example in 1976, the Court in *Cappaert v. United States*, 436 U.S. 128 (1976), succinctly explained the Supreme Court's position on implied reserved water rights:

This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right in unappropriated water which vests on the date of the reservation and is superior to the rights of future appropriators. Reservation of water rights is empowered by the Commerce Clause, Art. I, § 8, which permits federal regulation

1 of navigable streams, and the Property Clause, Art. IV, §3, which
2 permits federal regulation of federal lands. The doctrine applies to
3 Indian reservations and other federal enclaves, encompassing water
rights in navigable and nonnavigable streams.

4 *Id.* at 137 (citations omitted).

5 When determining the extent of these unique court-created federal reserved water rights
6 of use, the Court must examine the purpose for which the reservation was created:

7 In determining whether there is a federally reserved water right
8 implicit in a federal reservation of public land, the issue is whether
9 the Government intended to reserve unappropriated and thus
available water. Intent is inferred if the previously unappropriated
waters are necessary to accomplish the purposes for which the
reservation was created.

10
11 *Id.* at 140 (citations omitted).

12 A determination of the purpose of the reservation is critical as “water may be reserved
13 under the Winters Doctrine only for the primary purposes of the federal reservation.” *United*
14 *States v. Adair*, 723 F.2d 1394, 1408 (9th Cir. 1984), *cert. denied*, 967 U.S. 1252 (1984). Water
15 rights are not implied where they are merely “valuable for a secondary use of the reservation.”
16 *Id.* at 1409 (quoting *United States v. New Mexico*, 438 U.S. 696, 702 (1978)). Where water on a
17 federal reservation is not explicitly reserved, but is required for a secondary use, the Supreme
18 Court has inferred that “Congress intended . . . that the United States would acquire water in the
19 same manner as any other public or private appropriator” under state law. *New Mexico*, 438 U.S.
20 at 701.

21 Further, the primary purpose of the reservation also is used to adjudicate and define the
22 extent of the reserved rights, as the “implied-reservation-of water-rights doctrine . . . reserves
23 only that amount of water necessary to fulfill the purpose of the reservation, no more.” *Cappaert*,
24 426 U.S. at 141:

25 While many of the contours of what has come to be called the
26 “implied-reservation-of-water doctrine” remain unspecified, the
Court has repeatedly emphasized that Congress reserved “only that

1 amount of water necessary to fulfill the purpose of the reservation,
2 no more." Each time this Court has applied the "implied
3 reservation-of-water doctrine," it has carefully examined both the
4 asserted water right and the specific purposes for which the land
5 was reserved, and concluded that without the water the purposes of
6 the reservation would be entirely defeated . . . This careful
7 examination is required both because the reservation is implied,
8 rather than expressed, and because of the history of congressional
9 intent in the field of federal-state jurisdiction with respect to
10 allocation of water.

11 *New Mexico*, 438 U.S. at 700 (citations omitted).

12 The need to tailor the award of implied right to the "minimum need" of the reservation
13 also arises from the recognition that in the case of fully appropriated rivers, federally reserved
14 rights will frequently require a "gallon-for-gallon" reduction in the amount of water available for
15 state and private appropriators. *Id.* at 705. It is not uncommon for private appropriators to have
16 relied on these waters for their livelihood and expended considerable sums of money for the
17 construction of dams, ditches, and reservoirs long before the existence or extent of the federal
18 claims are recognized through an adjudication process. See *Winters*, 207 U.S. at 569-70.

19 The purpose and extent of the entire water right for the Walker River Paiute Reservation
20 as it existed in 1935 was previously determined by final order and decreed. *United States v.*
21 *Walker River Irr. District*, 104 F.2d 334 (1939). With regard to the 1936 Congressional
22 legislative addition of lands to the Reservation, the stated purpose for the withdrawal of those
23 lands was to provide the Tribe with additional lands for dry land stock grazing. S. R. 1750, 74th
24 Cong., 2d Sess. 6-39 (1936). If this Court elects to proceed in this case, despite lacking subject
25 matter jurisdiction, the extent of any claims to water rights of use associated with 1936 lands
26 must be limited to those necessary "for dry land stock grazing."

23 **5. Decree Court and United States District Court Lack Jurisdiction Over** 24 **Ground Water Located Outside Reservation Boundaries**

25 The Amended Counterclaim of the United States and that of the Tribe ask this Court to
26 recognize additional rights to groundwater not only underlying the reserved land, but to adjacent

1 lands as well. First of all, under the reserved rights doctrine, there is no basis upon which the
2 claims for water rights of use outside the exterior boundaries of the Walker River Paiute
3 Reservation may be made. The federal court, particularly the Decree court, holds no subject
4 matter jurisdiction over ground water claims or uses outside the Reservation.

5 Even if the United States and Tribes were only seeking to invoke the continuing,
6 regulatory jurisdiction under the Decree to claim interference with adjudicated, surface water
7 uses, there could be no jurisdiction in this Court without a specific allegation as to present
8 interference with a federal surface or ground water right as a result of pumping of state ground
9 water rights of use outside the boundaries of the federal reservation. Even with a specific
10 allegation, the State of Nevada, which holds the power to regulate the groundwater uses, would
11 be in a better position to enjoin an interfering ground water use, than the federal decree court that
12 only holds the power, under its continuing regulatory jurisdiction, to assert its authority over the
13 adjudicated surface water uses. If the ultimate remedy the United States and the Tribe seeks is to
14 shut off ground water uses, it is not this decree Court whose jurisdiction the United States and
15 Tribe should seek to invoke. This Court's continuing regulatory jurisdiction does not spread so
16 far.

17 When the federal government withdraws lands from the public domain for a federal
18 purpose, water rights are impliedly reserved to support the purpose of the withdrawal. The
19 Property Clause, Art. IV, § 3 of the United States Constitution, provides the federal government
20 with the authority for the regulation of federal lands and non-navigable waters within the federal
21 reservation. See, *Cappaert*, 436 U. S. at 138. Conversely, on lands outside the reservation, state
22 law governs:

23 [P]roperty ownership is not governed by a general federal law, but
24 rather by the laws of the several States. 'The great body of law in
25 this country which controls acquisition, transmission, and transfer
26 of property, and defines the rights of its owners in relation to the
state or to private parties, is found in the statutes and decisions of
the state.'



1 *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378 (U.S. 1977),
2 quoting *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 155 (1944).

3 Further, the Desert Land Act of 1877, which specifically addressed water rights on public
4 lands, provided that such water rights were to be acquired in the manner provided by the law of
5 the State of location. *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S.
6 142 (1935). In interpreting the Desert Land Act, the Supreme Court stressed that the waters of
7 lakes, rivers and other sources of water supply upon the public lands that were not navigable
8 were severed and “reserved for the use of the public under the laws of the states and territories.”
9 *Id.*, at 162.

10 To obtain water rights of use on non-federally reserved lands, the United States and the
11 Tribe are required to obtain water rights through the application and permitting in compliance
12 with the State of Nevada water code or claim pre-code vested rights for groundwater use
13 consistent with state law. The federal court cannot grant such groundwater rights of use, and its
14 ability to exercise jurisdiction over such rights is extremely limited.

15 A federal court’s jurisdictional authority to issue determinations with regard to non-
16 federally reserved groundwater rights is limited to cases involving: (1) federal rights in basin
17 adjudications of water systems in which hydrological connections between groundwater and
18 surface water are recognized (see e.g., *In re General Adjudication of All Rights to Use Water &*
19 *Water Rights*, 531 F. Supp. 449 (D.S.D. 1982)); (2) cases in which the federal water rights have
20 been impacted adversely by state agency determinations; and (3) appeal is made to the federal
21 decree court or injunctive relief is sought with regard to an undefined federal reserved right. See,
22 e.g., *United States v. Orr Water Ditch Co.*, 391 F.3d 1077 (2004), *Cappaert*, 426 U.S. at 135.
23 Jurisdiction in these cases arises under 28 U.S.C. § 1331, §1362, 1367, and §1345.

24 In this case, we have no new action for an adjudication. Neither the United States nor the
25 Tribe has claimed the necessity for a comprehensive adjudication of all rights to groundwater in
26 the Water River Basin. Nor have either alleged in a new action that the existing reserved rights

1 or claimed implied reserved rights have been or will be injured as a result of groundwater use
2 outside the original federal reservation. Without these allegations, brought in a new action, this
3 Court lacks jurisdiction to address nonfederal ground water claims.

4 **6. Conclusion**

5 For the above reasons, the Court should dismiss the Walker River Paiute Tribe and
6 United States' Amended Counterclaims, and require them to be brought in a new action; dismiss
7 all claims not based on federal law; and dismiss those related to ground water outside the
8 boundary of the reservation.

9 DATED this 31st day of March, 2014.

10 SCHROEDER LAW OFFICES, P.C.

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12 /s/ Laura A. Schroeder

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Schroeder Law Offices, P.C., over the age of eighteen and not a party to the within action, and that on this date I caused the foregoing document titled: ***POINTS AND AUTHORITIES OF CIRCLE BAR N RANCH, LLC, ET AL. IN SUPPORT OF ITS JOINDER TO WALKER RIVER IRRIGATION DISTRICT'S MOTION TO DISMISS CLAIMS OF UNITED STATES BASED UPON STATE LAW PURSUANT TO FED. R. CIV. P. 12(b)(1), AND SUPPLEMENTAL ARGUMENT*** to be electronically filed with the Clerk of the Court using the CM/ECF system, and I caused it to be served by electronic mail through CM/ECF addressed to the following persons:

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